



July 8, 2019

Damon Duncan  
President and CEO  
901 Chamberlayne Pkwy.  
Richmond, VA 23220

**Re: RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY'S ANNUAL AGENCY PLAN  
(FY 2019-20) AND FIVE YEAR AGENCY PLAN (FY 2020-24)**

Dear Mr. Duncan,

Enclosed please find comments on RRHA's Annual Agency Plan and Five Year Plan submitted on behalf of the Richmond legal aid community. Our three organizations, the Central Virginia Legal Aid Society, Legal Aid Justice Center, and Virginia Poverty Law Center regularly represent and advocate for RRHA residents.

We would welcome the opportunity to discuss any of the issues raised in these comments further. We ask that they be included and submitted to the United States Department of Housing and Urban Development as part of the Annual Agency Plan and Five Year Plan record.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Martin Wegbreit".

Martin Wegbreit  
Director of Litigation  
Central Virginia Legal Aid Society  
101 W. Broad St. Suite 101  
Richmond, VA 23220  
804-648-1012

A handwritten signature in cursive script, reading "Daryl Hayott".

Daryl Hayott  
Attorney  
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A handwritten signature in cursive script, reading "Louisa Rich".

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**COMMENTS OF THE LEGAL AID JUSTICE CENTER,  
THE VIRGINIA POVERTY LAW CENTER AND  
CENTRAL VIRGINIA LEGAL AID SOCIETY ON  
RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY'S  
ANNUAL AGENCY PLAN (FY 2019-20) AND  
FIVE YEAR AGENCY PLAN (FY 2020-24)**

The Legal Aid Justice Center (LAJC), the Virginia Poverty Law Center (VPLC) and Central Virginia Legal Aid Society (CVLAS) jointly submit these comments on the Richmond Redevelopment and Housing Authority's (RRHA) Annual Agency Plan for Fiscal Year 2019-2020 (hereafter, "Annual Plan") and Five Year Agency Plan for Fiscal Years 2020-2024 (hereafter, "Five Year Plan").

LAJC is one of two civil legal aid programs serving the Greater Richmond area. LAJC does not receive funds from the federal government and is not subject to certain restrictions imposed on recipients of federal funds for civil legal aid. LAJC provides legal representation to individual RRHA tenants in eviction and other matters and has provided legal representation to tenant organizations composed of RRHA residents. Additionally, LAJC brings impact litigation on behalf of RRHA tenants to protect tenants' rights under federal and state law.

VPLC is the state support center for all the civil legal aid programs in Virginia. Usually, VPLC does not represent individuals in evictions and other matters. Instead, VPLC's advocacy focuses on housing policy generally, with an emphasis on legislation in the Virginia General Assembly. Also, VPLC provides technical assistance to legal aid organizations interested in bringing impact litigation to enforce tenants' rights under federal and state law.

CVLAS is a non-profit law firm that provides free civil legal assistance to low-income people and preventative legal education in Richmond, Petersburg, Charlottesville, and surrounding cities and counties, using both federal and state funding.

The comments below address three general areas: 1.) Concerns regarding RRHA's

process in developing the Annual and Five Year Plans; 2.) Concerns regarding the Redevelopment of RRHA properties; and 3.) Concerns Regarding RRHA's Admissions and Continued Occupancy Policy (ACOP).

**I. Concerns Regarding RRHA's Process in Developing the Annual and Five Year Plans.**

We are concerned about RRHA's lack of meaningful public engagement on the Annual and Five Year Plans in violation of RRHA's statutory and regulatory obligations. A public hearing was held on June 12, 2019 at the Calhoun Center in Gilpin Court. Few residents attended that meeting, and none commented. There is clear resident interest in the topics contained in the Plans including the maintenance budget, eviction policies, and redevelopment. Many residents, however, may not have known about the meeting or may not have been able to attend.

**A. Incomplete ACOP**

Section B(1) of the Annual Plan (Annual Plan at 19) states that RRHA "revised/adopted changes to the Admissions and Continued Occupancy Policy (ACOP)", but RRHA did not post the changes on its website, nor were they available for inspection at RRHA's office when representatives from our organizations asked to see those changes. By letter hand delivered to RRHA on July 3, 2019, VPLC requested that RRHA make those changes publicly available, and for a 30 day extension of the comment period to enable members of the public to review and comment on them. As of today, that request was not responded to. Thus, it is impossible to meaningfully comment on those changes to the ACOP since we do not know what those changes entail. We are particularly concerned about the changes RRHA made to ACOP Chapters 3, 8, 9, 21 and 22. All comments on those proposed changes outlined below are based on our knowledge of existing policies.

**B. Inadequate Notice**

Housing authorities are required to hold a public hearing to accept comment on the Annual and Five Year Plans and provide notice at least 45 days before that hearing. 42 USC § 1437c-1(f)(2); 24 CFR § 903.17(b). According to RRHA's own presentation at the June 12, 2019 hearing, the public review period for the Plans began on May 20, 2019. The Richmond Times Dispatch published notice of the meeting on May 24, 2019 and an undated notice was posted on RRHA's website on May 20, 2019. All of these notices fall short of the required 45 day period, which would have had distribution of notice no later than April 28, 2019. Further, even if those notices had met the time requirement, they did not constitute a reasonable effort to ensure resident participation in the plans process, as is also required. 24 CFR § 903.17(c). RRHA should focus on providing residents with actual notice of the public comment meeting using varied strategies, including by mailing the notice to all residents with their regular rent statement.

**C. Meeting Location and Method for Receipt of Comments**

In addition to notice, housing authorities are required to hold the public meeting at a location convenient for residents. The June 12, 2019 meeting at Gilpin Court was very convenient for residents of Gilpin but inconvenient for the residents of many other RRHA developments. RRHA should, at a minimum, hold meetings at each of the Big 6 complexes so that residents can easily attend or hold meetings at one or more centrally situated locations. For residents who are unable to attend the public comment meeting on the Plans, RRHA should provide multiple methods for them to submit written comments. According to RRHA's notice, written comments can be submitted to RRHA until July 8, 2019 but only by hand delivery or first class mailing to the housing authority's main office in Gilpin Court. This requirement is extremely burdensome for residents of other complexes. RRHA should accept written comments electronically and at each management office.

#### **D. Opportunity to Be Heard by RRHA Commissioners**

RRHA residents must be made to feel that any comments they make on the Plans will be taken seriously by the housing authority and its Board of Commissioners. The RRHA Board of Commissioners is required to conduct the public hearing, and, by extension, Commissioners must be present to conduct the hearing. 42 USC § 1437c-1(f)(1). Most if not all Commissioners failed to attend this hearing, and none participated in the presentation. Without meaningful and legally compliant outreach, RRHA residents are unable to participate in the planning and governing of their own communities.

#### **II. Concerns Regarding the Redevelopment of RRHA Properties.**

Both the Annual and Five Year Plans contemplate major changes to Richmond's public housing system. While no one disputes the need for change, the vision set out in the Annual and Five Year Plans fails to ensure that the supply of housing to those most in need, namely families earning less than 30% of the area median income (AMI), will not be reduced. According to the City Of Richmond's FY 2016-20 Consolidated Plan, the average income of a public housing household (of which many are families) is \$9,853, just over half of 30% of median income for a one-person household (\$17,500). According to the Annual Plan, 90.1% and 96.1% of households on the waiting list for family and elderly public housing, respectively, make less than 30% of the area median income. (Annual Plan at 9-10). Moreover, there are 19,550 households in Richmond with incomes less than 30% of the area median income. (*Id.* at 12). As the Consolidated Plan notes, nearly 63% of those households are severely cost-burdened, and nearly 76% has one or more housing problems. (*Id.* at 30, 36). Likewise, according to the Consolidated Plan, 13,206 families were on the waiting list for public housing and Housing Choice Vouchers, and "the need for affordable housing is far greater than the existing supply of public housing." *Id.* at 46, 50.

Because of this acute need for housing available to extremely low income families, we are particularly concerned about the Annual Plan's contemplation of demolition or disposition of four large public housing developments (Fay Towers, Gilpin Court, Mosby South, and Creighton Court) as well as smaller sites. The large developments contain 1,591 units, and they provide housing mostly for households earning under 30% of area median income. The Annual Plan fails to provide any information on how or where all 1,591 units will be replaced. (Annual Plan at 32-34). Moreover, the vision articulated in the Annual Plan and Five Year Plans fails to comport with a resolution adopted on January 16, 2019 by RRHA's Board of Commissioners that sets forth "Guiding Principles for Rehabilitation and Redevelopment", attached hereto as Exhibit 1. The most glaring omission is RRHA's stated commitment "to maintain—and, wherever possible, increase—the number of families receiving RRHA housing assistance." We ask that the Annual Plan be amended by either referencing the Resolution attached as Exhibit 1 or including it as an attachment to the Annual Plan.

A related concern is RRHA's emphasis on converting the existing public housing stock to "mixed income communities," as such conversion may result in mass displacement and a loss of rights for RRHA residents. The focus on mixed-income and market-competitive units is a serious deviation from the purpose of the public housing program, which is to provide decent and safe housing to low-income families, the elderly, and persons with disabilities. RRHA's focus should be on the needs of its residents. Any redevelopment process must ensure meaningful resident participation, complete transparency, preservation of tenant rights during and after redevelopment, and should guarantee long-term affordability of the redeveloped communities.

**A. Transparency:**

The Annual Plan specifically states that Gilpin Court, Creighton Court, Mosby Court, and other smaller sites are slated for demolition or disposition in the coming years. It is not clear, however, which United States Department of Housing and Urban Development (HUD) programs RRHA will use to facilitate this redevelopment. Different types of subsidy come with significantly different rights and guarantees for residents. RRHA must inform residents of its plans so that they can meaningfully be involved in choosing the right path for their communities. This means that outreach must be done regularly and thoroughly to all affected tenants.

The Annual Plan references RRHA's proposal to exclude redevelopment actions from its definition of "substantial deviation" including the conversion of public housing to project based rental assistance or project based voucher assistance. (Annual Plan at 28). We oppose this proposal because it eliminates the requirement that RRHA consult with the Resident Advisory Board (RAB) about these redevelopment plans and exempts the changes from the notice and public comment requirement. Even if RRHA's intention is to avoid amending its Annual Plan with each change, it is important to have a mechanism for public accountability and public comment so that residents and community members have the opportunity to have their voices heard.

**B. Resident Participation:**

In addition to being informed about the redevelopment process, RRHA residents must be guaranteed a meaningful and enforceable right to participate in all substantive redevelopment decisions. For example, RRHA could create a resident task force for each complex where redevelopment activities will occur, so that residents have a solid mechanism for participating in the process from start to finish. It is also integral that after any potential conversion to other HUD

subsidy programs, such as the Section 8 program, RRHA residents retain their participation rights under 24 CFR § 964 rather than the more limited rights under 24 CFR § 245.

**C. Tenant Rights During and After Redevelopment:**

There are certain rights that should be protected during redevelopment irrespective of which strategy RRHA employs (e.g. Rental Assistance Demonstration (RAD), Choice Neighborhoods, Section 18 demolition only). We realize some programs may already guarantee some of these rights, but many do not and it is important for RRHA to commit to these core principles:<sup>1</sup>

**1. One for One Unit Replacement**

- As stated above, Richmond's housing shortage is most acute for the City's poorest families (0-30% AMI). RRHA is one of the few sources of housing available to those families. It is integral that RRHA guard against any loss in the number of affordable housing units available. Replacement units should be of like kind, subject to an analysis of resident needs.
- While Housing Choice Vouchers may be appropriate for some families, at their option, they are not an equivalent replacement for public housing. In a state that lacks source of income non-discrimination laws, there are no safeguards to guarantee that residents with vouchers can find units in the communities of their choice. Moreover, vouchers do not ensure long-term stability because landlords can decide not to renew their Housing Assistance Payment (HAP) contracts at any time.

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<sup>1</sup> As noted above, the RRHA Board of Commissioners passed a Resolution setting forth guiding principles for rehabilitation and redevelopment. Some of these principles are contained in that Resolution while others are not. Regardless, the Annual Plan does not even articulate the principles adopted by the RRHA Board of Commissioners.



- Whereas publicly-owned housing units represent a durable investment in the future of affordable housing for Richmond's poorest families, Housing Choice Voucher funding is subject to appropriations and affordable housing units can be functionally eliminated by Congress (or other funders) changing numbers on a spreadsheet.

## 2. Right to Return

Residents must be guaranteed the right to return to their own units, or a unit in the same community they lived in before redevelopment if they choose to stay. Absent a guaranteed right of return, hundreds of households could be displaced. Large scale displacement of public housing communities would have a disparate negative impact on communities of color, and other protected classes, such that it would likely violate the state and federal fair housing laws. Moreover, displacement is a long running concern among Richmond public housing residents due to Richmond's shameful legacy of uprooting communities of color.

## 3. Limits on Rescreening

Any resident who moves and/or whose assistance is converted to a different subsidy during redevelopment should not have their eligibility re-determined or be subject to any rescreening process.

## 4. Build First Before Demolition

No residents should be moved from their homes before a physical replacement unit is available for them. This is another guarantee meant to guard against purposeful or accidental displacement of residents from their homes.

## 5. Right of First Refusal

RRHA's Five Year Plan indicates that it will explore private management of public housing and converted developments (Five Year Plan at 68). We are concerned that private, rather than

public, management and ownership of affordable housing will lessen public oversight and threaten the long-term affordability of subsidized developments. Instead of looking to private companies, RRHA should provide a right of first refusal to tenant organizations eligible to buy or manage converted units. This right would include notice of each redevelopment project, the opportunity to make a first offer, and the opportunity to match subsequent offers.

6. Commitment to creating contracting opportunities for residents under Section 3.

All construction and development contracts that RRHA enters into should be first offered to low-income individuals from affected communities, or their businesses, as is required by Section 3 of the Housing and Urban Development Act of 1968.

7. Maintenance of Rights

Residents in traditional public housing have heightened due process rights and it is integral that RRHA residents maintain these rights after any redevelopment. For example:

- In public housing, residents are guaranteed both formal and informal hearings to contest negative treatment by the housing authority, including the right to review evidence, confront witnesses, and a written decision. 24 CFR § 966, *et seq.* Residents covered by most other subsidy programs, including the Section 8 program, are only guaranteed informal hearings prior to eviction. (HUD Handbook 4350.3). RRHA must commit to guaranteeing residents both formal and informal hearings before evictions and informal hearings to dispute adverse action.
- Residents of public housing are entitled to 14-day notice before they may be evicted for nonpayment of rent. This is a longer time period than the five days that Virginia law requires. Residents should be assured that after

redevelopment, they will continue to receive 14-day notice and time to cure their eviction before a court proceeding could be initiated.

8. Automatic 120-Day Search Period for Public Housing Tenants Issued Vouchers

Any resident who is issued a portable Housing Choice voucher from RRHA should be provided with 120 days to find rental housing without having to apply for any extensions. Moreover, extensions should be provided to tenants who can show good faith in their housing search.

**D. Maintaining Long Term Affordability of Redeveloped Communities**

Neither the Annual Plan nor the Five Year Plan indicates how RRHA will ensure the long-term affordability of public housing developments after they are redeveloped. For units that will remain in the public housing inventory this is of little concern—however, it appears most of the units will not remain in the public housing inventory. Thus, RRHA must put into place mechanisms to ensure the long-term affordability of those units. Further, safeguards should be put in place to prevent any losses in affordability due to breach of contract or foreclosure on the part of the owners or managers of these new developments. For units undergoing RAD conversion, one mechanism would be for RRHA to retain ownership of the land where the units are located and lease the land to the new owner entities. Another would be to ensure that residents have either outright ownership or are made partners in the ownership entities established in the RAD conversion process.

**III. Concerns Regarding RRHA's Admissions and Continued Occupancy Policy.**

**A. Better Policies to Reduce Evictions**

For years 2017 and 2018, we obtained data on evictions from RRHA housing from Ben Schonenfeld's Virginia Courts Open Data Project and that data was analyzed by the RVA Eviction Lab at Virginia Commonwealth University. The eviction data was scrubbed of duplicate filings,

and the number of eviction filings and judgments are recorded for specific RRHA developments.<sup>2</sup>

Using the number of units shown on RRHA's website for each development, rates of eviction filings and judgments, respectively were calculated for each development and RRHA wide for years 2017 and 2018. The data tabulated is as follows:

**2017 RRHA EVICTION DATA SCRUBBED OF DUPLICATES**

<b>Development</b>	<b># Units</b>	<b># Filings</b>	<b># Judgments</b>	<b>Filing Rate</b>	<b>Judgment Rate</b>
<b>Hillside Court</b>	402	227	171	56.47%	42.54%
<b>Whitcomb Court</b>	447	220	139	49.22%	31.10%
<b>Fairfield Court</b>	447	202	126	45.19%	28.19%
<b>Mosby Court</b>	458	125	96	27.29%	20.96%
<b>Gilpin Court</b>	783	109	78	13.92%	9.96%
<b>Creighton Court</b>	504	107	67	21.23%	13.29%
<b>Stonewall</b>	70	36	25	51.43%	35.71%
<b>Fay Towers</b>	123	21	13	17.07%	10.57%
<b>Fulton Community</b>	64	17	9	26.56%	14.06%
<b>Lombardy</b>	75	4	4	5.33%	5.33%
<b>Afton Avenue</b>	40	7	1	17.50%	2.50%
<b>Old Brook Circle</b>	25	1	1	4.00%	4.00%
<b>Randolph Housing</b>	52	2	1	3.85%	1.92%
<b>Stovall Place</b>	30	2	0	6.67%	0.00%
<b>Other</b>	207	12	4	5.80%	1.93%
<b>TOTAL</b>	3727	1092	735	29.30%	19.72%

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<sup>2</sup> We note that we removed duplicate filings from this data to present a better picture of how many individual households face eviction but RRHA should be cognizant that multiple evictions filings are still harmful to tenants' financial stability.

**2018 RRHA EVICTION DATA SCRUBBED OF  
DUPLICATES**

<b>Development Name</b>	<b># Units</b>	<b># Filings</b>	<b># Judgments</b>	<b>Filing Rate</b>	<b>Judgment Rate</b>
<b>Gilpin Court</b>	783	465	278	59.39%	35.50%
<b>Hillside Court</b>	402	261	173	64.93%	43.03%
<b>Mosby Court</b>	458	217	140	47.38%	30.57%
<b>Fairfield Court</b>	447	208	128	46.53%	28.64%
<b>Whitcomb Court</b>	447	233	127	52.13%	28.41%
<b>Fay Towers</b>	123	68	40	55.28%	32.52%
<b>Creighton Court</b>	504	94	33	18.65%	6.55%
<b>Stonewall</b>	70	18	8	25.71%	11.43%
<b>Fulton Community</b>	64	14	6	21.88%	9.38%
<b>Afton Avenue</b>	40	5	1	12.50%	2.50%
<b>Lombardy</b>	75	1	1	1.33%	1.33%
<b>Randolph Housing</b>	52	3	1	5.77%	1.92%
<b>Stovall Place</b>	30	1	0	3.33%	0.00%
<b>Other</b>	232	8	5	3.45%	2.16%
<b>TOTAL</b>	3727	1596	941	42.82%	25.25%

The data shows that eviction rates from RRHA housing at several developments vastly exceeds the unacceptably high 11% eviction rate<sup>3</sup> in 2016 calculated by the Princeton Eviction Lab for the City of Richmond overall.<sup>4</sup> At Hillside Court, the eviction rate exceeded 40% in both years, nearly four times the Citywide eviction rate. Similarly, RRHA’s system wide eviction rate is at 20% and 25%, respectively, for years 2017 and 2018. These appalling eviction rates will only be reduced if RRHA adopts a completely different approach to evictions, whereby evictions become an intervention of last resort.

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<sup>3</sup> The term “eviction rate” has the same meaning as the term “judgment rate;” meaning that the Princeton Eviction Lab determined the eviction rate by dividing the total number of eviction judgments (subtracting duplicate eviction judgments for the same person in the same year) by the number of rental units. RRHA eviction rates were calculated by dividing the total number of judgments in each development (subtracting duplicate eviction judgments for the same person in the same year) by the number of rental units in each RRHA development.

<sup>4</sup> B. Theresa, *The Geography of Eviction in Richmond: Beyond Poverty*, at 2 (available at <https://cura.vcu.edu/media/cura/pdfs/cura-documents/GeographiesofEviction.pdf>)

To reduce RRHA's unacceptably high eviction rates, we propose the following changes to the ACOP:

1. Opportunity to Meet with a Manager

In every eviction notice, provide the tenant the opportunity to meet with the site manager to discuss the eviction. For evictions relating to non-payment of rent, the manager will review the resident's income and rent to ensure rent was properly calculated, as well as the rent ledger to ensure the accuracy of the pay-or-quit notice. Whenever possible, efforts must be made—in consultation with the resident—to determine if the situation can be resolved by agreement or other means short of the eviction process, such as by repayment agreements, reasonable accommodations, community supports, and the like.

2. Unlawful Detainers Should be Filed after the 25<sup>th</sup> of the Month

For non-payment of rent cases, RRHA should not file an Unlawful Detainer action prior to the 25<sup>th</sup> day of the month in which the relevant non-payment occurred; and before filing it should make efforts to communicate with the resident to secure their payment or allow the tenant to enter into to a payment plan for the unpaid rent.

3. Change Accounting to Apply Payments to Current Rent

When accepting rent payments from tenants, RRHA should apply the payment first to the current rent owed, then to any unpaid rent, and last to any unpaid charges such as late fees and utility charges. This will prevent tenants from experiencing cascading late fees, which inhibit the tenant's ability to become current in their rent.

4. Offer Reasonable Repayment Agreements

Allow otherwise lease-compliant tenants to enter into reasonable repayment agreements pursuant to the repayment schedule contained in RRHA's Administrative (Administrative

Plan at 16-26) but eliminate the requirement that the tenant pay 20% of the total amount owed as a precursor to entering into the agreement.

5. Do Not File an Unlawful Detainer Action for Less than \$50

Refuse to file an eviction for non-payment of rent where the balance of rent owed is less than or equal to \$50.

6. Participate in Richmond's Eviction Diversion Program

Agree to participate in the City of Richmond' Eviction Diversion Program for all eligible non-payment eviction cases.

7. Easy to Understand Notices

Ensure that all tenants receive notices in plain language that they can understand, particularly in lease violation cases. We urge RRHA to review Lisa L. Walker's PowerPoint presentation entitled "Best Practices for Termination Notices," attached as Exhibit 2. (Creating understandable notices includes adherence to all of RRHA's disability and language access related obligations).

8. Emergency Contact

Ensure that all tenants are offered the opportunity to designate a contact person, such as a caregiver, family member, or other trusted third party, in cases of emergency that RRHA will attempt to contact prior to filing an eviction. Ensure that all such people are aware of the right under Va. Code § 55.1-1209 for a tenant to designate a third party to receive copies of notices and other documents from RRHA.

9. Discretion

For evictions other than for non-payment of rent, exercise discretion to avoid eviction by considering factors that might indicate a reasonable probability of favorable future conduct

by the tenant. For examples of such factors we suggest adopting those used by the Charlottesville Redevelopment and Housing Authority (CRHA). A copy of CRHA's eviction policy is attached as Exhibit 3.

**B. Violence Against Women Act (VAWA)**

We applaud RRHA for continuing to give domestic violence survivors a preference for admission to public housing. We urge RRHA to include in its transfer policies an explicit provision stating that victims of domestic violence are eligible to request an Inter-Program Transfer from the Public Housing Program to the Housing Choice Voucher Program as provided for in ACOP Chapter 15, Section K (Inter-Program Transfers). The authority for such inter-program transfers can be found in HUD Notice PIH 2017-08 (May 19, 2017) at ¶12.3, which states as follows:

A tenant must be allowed to seek an internal and external emergency transfer concurrently if an internal safe unit is not immediately available. For example, if a PHA owns one public housing building and there are no vacancies in the foreseeable future, a victim may seek an internal and external emergency transfer concurrently, as there is no unit immediately available. In this instance, a PHA may decide to provide the victim a voucher (if available) or make other referrals as is described in their Emergency Transfer Plan.

**C. Lease Renewals**

Annual Plan Section B(1) (Annual Plan at 19) states that ACOP Chapter 8 Section C was revised to clarify and reflect RRHA's policies regarding lease renewals and its effect on the status of pending litigation concerning lease violations. This proposed change fails to specify what the new policy language will be, which makes it impossible to comment fully on the revision. Most likely, this change is intended to reserve RRHA's right to evict tenants after their leases have renewed in direct violation of Virginia law. LAJC has represented multiple tenants facing eviction by the sheriff whose leases had renewed since RRHA obtained judgments against them. In many cases, after stopping the eviction, the tenant was able to work out an agreement with RRHA, and RRHA refrained from refiling another eviction action. RRHA has expended significant resources



to reserve its right to evict, including paying a private attorney to appeal one of these cases to Richmond Circuit Court, seeking a different opinion. However, once again, the Court held that under the Virginia Residential Landlord Tenant Act (VRLTA), RRHA could not have the sheriff evict a tenant if the lease renewed after the initial court judgment. RRHA continued to fight to evict public housing tenants by retaining private counsel to file another action in Richmond Circuit Court on this issue. RRHA proactively sought a declaratory judgment on their ability to evict people in preparation for sending out new leases that were required after a July 2018 class action settlement for overcharging residents for excess utilities.<sup>5</sup> Here, the Annual Plan appears to yet again be seeking to preserve RRHA's rights to evict tenants on judgments that occurred prior to lease renewal, despite numerous opinions from judges stating that RRHA cannot do so under Virginia statute. (Va. Code § 55-248.34:1(A); *see also* §§ 55-248.9(A)(1); 55-248.3:1). We stand strongly against any proposed revision that would seek to increase evictions.

#### **D. Hardship Exemption**

We are disappointed to see no revisions regarding RRHA's policies surrounding the hardship exemption in the Annual Plan. The hardship exemption is an essential right for public housing tenants who have no income, as it prevents eviction for non-payment of rent if the tenant has been required only to pay the minimum rent for at least 90 days but was unable to afford the minimum rent. 24 CFR § 5.630.

Public housing tenants with no income are still charged a minimum rent. While some minimum rent is permissible by statute and under HUD regulations even if a tenant has no source of income, RRHA could charge as little as \$0 a month for these tenants. (42 U.S.C. §

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<sup>5</sup> To date, these leases have not been executed.

1437a(a)(3)(A)). Instead, RRHA has used its discretion to charge the maximum rent amount allowed of \$50 a month.

On top of this minimum rent, a tenant is charged for excess utility costs, which includes any air conditioner usage in the summer. If a tenant with zero-income falls behind on either rent or utility payments one month, RRHA adds a flat late fee of \$15 to their balance—and \$15 is a 30% late fee for \$50 rent, which is well over the Richmond General District Standing Order that states that landlords cannot collect on late fees in excess of 10% of rent in an eviction action.<sup>6</sup> All of these charges quickly add up, and we have seen many tenants who have lost their jobs accumulate large balances over time.

RRHA should proactively inform tenants of their right to request a hardship exemption if they are unable to afford the \$50 minimum rent. HUD guidance interprets the hardship exemption regulation to require exactly that, stating that the public housing authority “*must* advise a family paying minimum rent of their right to request the hardship exemption.” (*Public Housing Occupancy Guidebook*, Chapter 13.1, p. 159). If tenants do not request a hardship exemption, they will not be considered for an exemption, but tenants cannot request a protection they do not know exists. RRHA currently appears to take the position that including the hardship exemption within a long lease document at the beginning of every tenant’s initial move-in is “sufficient” notice. We urge RRHA to adopt a policy that requires affirmative notice of the hardship exemption either at the moment that the tenant begins paying minimum rent, or prior to filing a notice of lease termination on a zero-income tenant for non-payment of rent. We have had a disproportionate number of clients from RRHA facing eviction who are on minimum rent, and these clients repeatedly express that they were unaware of the hardship exemption. If the hardship exemption

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<sup>6</sup> [http://www.courts.state.va.us/courts/gd/Richmond-Civil/late\\_fees.pdf](http://www.courts.state.va.us/courts/gd/Richmond-Civil/late_fees.pdf).

is a right that these tenants are entitled to, RRHA should want to inform tenants of this right, rather than jump to eviction proceedings.

Finally, RRHA uses a zero-income worksheet to determine whether the tenant should be paying higher than minimum rent. RRHA asks tenants the value of the toilet paper, cleaning products, and other daily household goods used on a monthly basis to then impute this value as “income.” These values are imputed as if the tenant were receiving those goods in cash on a regular basis even if people are donating the toilet paper and the tenant has no source of liquid assets. We have heard numerous tenants complain that RRHA will not allow tenants to claim that the value of these goods is zero; and will often encourage tenants to give high estimates of the value of these items, resulting in one such tenant claiming that her paper products used were worth over \$1,000 annually. HUD explicitly prohibits public housing authorities from counting temporary, nonrecurring, or sporadic income (including gifts) as annual income. 24 CFR § 5.609(C). However, RRHA improperly ignores this regulation by counting the estimated value of goods that a tenant needs to survive as income. The zero-income sheet results in tenants’ rent being just slightly above minimum rent: for example, \$60 instead of \$50. The outcome of this policy is that while RRHA is merely making \$10 more a month from the tenants’ rent, the tenant suddenly no longer has access to a hardship exemption, regardless of whether they are able to afford \$60 per month on zero income. RRHA can then evict the tenant for nonpayment of rent and replace the minimum rent household with someone on higher rent.

#### **E. Repayment of Rent Exempted for Temporary Hardship**

We are disappointed that the Annual Plan does not include a modification of RRHA’s rule that suspended rent, due to Temporary Hardship, will have to be paid back by the tenant. According to RRHA’s current ACOP, a family awarded a Temporary Hardship exemption must resume

payment of the minimum rent and must repay RRHA the amounts suspended in accordance with RRHA's repayment agreement policy (ACOP 16-17, page 96). The tenants who qualify for a Long Term Hardship exemption do not have to repay rent for the time suspended. According to the ACOP, RRHA defines temporary hardship as a hardship expected to last 90 days or less. Long Term Hardship is defined as a hardship expected to last more than 90 days. By that standard, a person that is suffering from hardship for 85 days will have to repay the amount suspended, while those who have 91 days of hardship will not be liable for outstanding rent. RRHA should implement a standard that allows for a one-time exemption of repayment for those who fall on temporary hardship. This would allow the tenant to resume payments of the minimum rent upon the expiration of the exemption but would not mandate that the tenant repay RRHA the amounts suspended. This would show RRHA's commitment to tenant retention, and immediately help to reduce RRHA's high eviction rates.

#### **F. Grievance Procedures**

We are also disappointed to see no mention of grievance procedures in the proposed amendments to RRHA's ACOP. While the ACOP imposes clear deadlines by which the tenant must request a grievance conference, there are no clear deadlines imposed on RRHA. Public housing tenants are entitled to grievance procedures to resolve any dispute which a tenant may have with respect to a public housing authority's action or failure to act in accordance with the individual tenant's lease. 24 CFR § 966.50, *et seq.* Grievance hearings are meant to be alternatives to going to court and they allow a tenant to work out an issue with the housing authority prior to any eviction proceedings. LAJC has received numerous complaints from public housing residents that their written request for a grievance hearing was never responded to, in direct violation of 24 CFR §§ 966.54 and 966.56. However, as soon as an attorney steps in to represent the client, RRHA

schedules an informal grievance as required by HUD regulations. The law applies to all public housing residents, regardless of their access to an attorney, and we urge RRHA to revise the ACOP to include clearer deadlines by which RRHA must respond to a grievance request.

#### **IV. Conclusion**

We ask that RRHA include these comments with its submission of the Annual Plan and Five Year Plan to HUD. We thank RRHA for its consideration of these comments and look forward to further discussions of these issues with management and residents.

RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY  
PROPOSED RESOLUTION



Meeting Date January 16, 2019

Agenda Item No. 1

**TITLE:** Resolution of the Richmond Redevelopment and Housing Authority Adopting Guiding Principles for Rehabilitation and Redevelopment

**RESOLUTION:**

WHEREAS, Richmond Redevelopment and Housing Authority ("RRHA") is currently engaged in a comprehensive, agency-wide process to rehabilitate and redevelop its public housing communities and other real estate assets; and

WHEREAS, the Board of Commissioners of the Richmond Redevelopment and Housing Authority (the "Board") wishes to formally lay out RRHA's goals with respect to such rehabilitation and redevelopment; and

WHEREAS, the Board further wishes, with respect to such rehabilitation and redevelopment, to formally make certain commitments to RRHA's residents and employees, to other low-income residents of Richmond, to RRHA's government, business, and philanthropic partners, and to the public at large;

NOW, THEREFORE, BE IT RESOLVED by the Board that the Guiding Principles for Rehabilitation and Redevelopment, attached hereto as "Attachment A" and incorporated by reference as if fully laid out herein (the "Guiding Principles"), shall be RRHA's official statement of its goals and priorities as RRHA rehabilitates and redevelops its public housing communities and other real estate assets;

AND BE IT FURTHER RESOLVED that RRHA, through its Board and its Chief Executive Officer, shall look to and consult such Guiding Principles when rehabilitating and redeveloping RRHA's assets, and make decisions which comport as wholly as possible with the goals and priorities therein stated;

AND BE IT FINALLY RESOLVED by the Commissioners of RRHA that the Guiding Principles are approved as laid out herein, and shall be adopted.

Recommended by \_\_\_\_\_

Date January 16, 2019

Orlando C. Artze  
Interim Chief Executive Officer

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COMMISSIONERS' ACTION

Approved JAN 16 2019

Disapproved \_\_\_\_\_

## **ATTACHMENT A**

### **GUIDING PRINCIPLES for REHABILITATION AND REDEVELOPMENT**

RRHA has begun to engage in a comprehensive, agency-wide process to reassess, restructure, and rehabilitate RRHA's assets and day-to-day operations. This process will help RRHA better serve the physical needs of Richmond's public housing stock, the social and economic needs of the more than 7,000 Richmond families receiving RRHA housing assistance, and RRHA's broader contribution to the greater low-income population in Richmond.

To meet these ends, RRHA has established four primary goals:

- Fully transform RRHA's properties through rehabilitation or new construction to ensure the long-term physical and financial stability of RRHA-assisted housing for the next generation.
- Increase the livability and marketability of all RRHA-assisted housing to promote a higher quality of life for Richmond's low-income citizens.
- Offer residents a broader range of assisted housing options in order to best balance the reduction in density of RRHA's public housing with the need to preserve the cohesion and integrity of RRHA's existing neighborhoods.
- Continue to provide a broad range of support services, both through RRHA's community partners and through RRHA's own Department of Resident Services, in order to better equip RRHA's residents with the tools to improve their socioeconomic status.

As RRHA works to achieve these goals, RRHA makes the following commitments to its residents, employees, partners, and to the City as a whole:

- RRHA commits to maintain—and, whenever possible, increase—the number of low-income families receiving RRHA housing assistance. RRHA will honor this commitment by:
  - stabilizing and preserving the greatest proportion of RRHA-owned public housing as is economically feasible and consistent with creating more livable, amenity-rich neighborhoods that are better integrated in to the fabric of the City of Richmond;
  - strategically committing project-based vouchers to affordable, high-quality, geographically accessible housing units; and
  - expanding RRHA's Housing Choice Voucher authority whenever Federal funding opportunities are available.
- RRHA commits to use all available financial and legal resources to maximize RRHA's capital and support RRHA's operations. These resources may include:
  - using federal and state recapitalization techniques such as the Rental Assistance Demonstration (RAD) program, Section 18 of the U.S. Housing Act of 1937, and Low-Income Housing Tax Credits to leverage equity already existing in RRHA's public housing communities; and
  - capitalizing on RRHA's non-public housing properties (through redevelopment, sale, or both) to generate new streams of revenue.
- To better preserve the cohesion of its existing neighborhoods, RRHA commits to make decisions that provide RRHA's current public housing residents the choice to return to rehabilitated or new housing units at their existing public housing sites.

- RRHA commits to minimize the disruption to residents caused by redevelopment of its existing housing. RRHA will:
  - for new construction, develop permanent replacement units before demolishing existing units whenever practicable;
  - for new construction or rehabilitation, provide on-site and off-site temporary or permanent replacement units for displaced families, in accordance with any applicable law as well as the individualized needs and preferences of the family;
  - engage in well-coordinated and appropriately-timed phased relocation, reconstruction, and demolition; and
  - carry out all relocation efforts with special care for elderly and disabled residents.
- RRHA commits to meaningful public engagement on all matters of public contracting involved RRHA's redevelopment. RRHA commits to an open, fair, and unbiased procurement process for all stages of redevelopment, from the selection of developer-partners, pre-development service providers, general contractors, and property management contractors. RRHA commits to the robust, meaningful community outreach needed to provide every possible opportunity to Section 3-eligible residents and Section 3 business concerns, along with minority- and women-owned businesses and other disadvantaged business entities.
- RRHA commits to an open and honest decision-making process that equips residents and stakeholders to make informed contributions to RRHA's redevelopment. RRHA will:
  - provide residents with timely, honest, reliable information about the redevelopment process;
  - solicit input on the redevelopment process from the Richmond Tenants' Organization ("RTO") and the various RRHA Tenant Councils; and
  - solicit input on the redevelopment process from other community advocates, partners, and stakeholders, while recognizing the RTO and Tenant Councils as the sole legal representatives of the RRHA public housing residents.
- RRHA intends to continue to be a long-term community leader within the City of Richmond, and as such, commits to maintain the greatest possible degree of ownership and management responsibility for RRHA-assisted housing after redevelopment. RRHA commits to the eventual goal of self-development with minimal assistance from development partners.
- RRHA values its employees and commits to providing the greatest possible continuity of management and employment during RRHA's transition. To this end, RRHA commits as follows:
  - to maintain the largest feasible ownership and management role in RRHA's redeveloped communities, promoting maximum future employment opportunities with RRHA.
  - to commit developer-partners and property management partners to prioritize hiring displaced RRHA staff members for vacant positions in redeveloped RRHA communities.
  - to provide job experience and training opportunities so that current RRHA employees remain as qualified as possible as RRHA's role changes.
  - to maintain open, honest, and frequent communications with all employees, so that all employees can make timely and well-informed decisions about their careers.





Housing and Development Law Institute

EXHIBIT

2

tabbies

## ***2019 VAHCDO ANNUAL CONFERENCE***

# ***BEST PRACTICES FOR TERMINATION NOTICES***

**Presented By:**  
**Lisa L. Walker**  
**CEO & General Counsel**  
**Housing and Development Law Institute (HDLI)**

**April 25, 2019**  
**Virginia Beach, VA**



**EQUAL HOUSING  
OPPORTUNITY**

## **Subject Matter Covered Today:**

- 1. General Termination Notice Principles**
- 2. Content of Termination Notices**
- 3. Timely & Proper Delivery of Termination Notices**

**HDLI's usual terminations/grievance training  
is a comprehensive full-day training!**



**1.**

## **General Notice Principles**



## **State and Local Law**

**Make sure that your termination notices take into account the content and notice provisions of your state and local landlord-tenant laws. This is in addition to the requirements under HUD regulations.**



## **Proper Notices Are Critical**

**The notice element is one of the most important elements of due process!**

**An improper notice can unravel an otherwise lawful termination.**

**Courts often will invalidate/dismiss a termination/eviction where the notice was not done properly.**

## Who Gets Term Notices

### Who is Entitled to Receive Notice?

- Terminated tenants or participants of record
- Not Squatters

## Clients With Visual Impairments

If client is visually impaired, s(he) has a right to receive required notices in an accessible format

**Query: Do your forms inquire as to visual impairments for notice purposes?**

May include:

- Large print
- Braille
- Reader
- Sign language interpreters
- Readers
- Other?

## **Clients With Mental Impairments**

**What provisions do you make for clients who are mentally impaired?**

- Can they read and comprehend?
- Can they appreciate the seriousness/nature of their predicament?
- Are they competent to lodge a defense?

- Contact representative
- Appoint a guardian *ad litem*
- Referral to legal assistance
- Disclosure to the court
- Other?

*Blatch v. NYCHA (2008)*

## **Consequences of Improper Notice**

**Notices Can Be Deemed Improper if:**

1. Not delivered timely
2. Don't have proper content
3. Not provided in an accessible format for persons with disabilities
4. Not provided in alternative language for LEP person

## Consequences of Improper Notice

**If the Notice is Improper:**

**Courts can:**

1. **Require you to start all over and redo the notice**
2. **Invalidate the termination/eviction (even if everything else was done perfectly)**

**BEST PRACTICE**

*Double check the grounds for your termination to ensure that they match exactly the grounds stated in the lease violation and termination notices.*

## 2. Content of Notices



### **QUERY:**

*What is a termination notice  
supposed to accomplish?*



## **Purpose For Termination Notices**

Termination notices are designed to give the client enough information to enable them to render an effective defense to the termination, should they care to do so.

- That is why the notice must be delivered in an accessible/readable format (504, LEP)
- That is why you must consider the competency of the client (504)
- That is why the notice must be delivered with ample notice to prepare an effective defense under the circumstances
- This is why the notice needs to be sufficiently detailed in describing the infraction(s)
- This is why the notice needs to specifically cite the legal authority upon which the termination is based

**HUD Regulations are Vague as to  
content...**

**Many courts will require more...**



## **Required By the PH Regulations**

**"The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish.**

**The notice shall also inform the tenant of the right (pursuant to §966.4(m)) to examine PHA documents directly relevant to the termination or eviction.**

**When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure."**

**24 CFR 966.4(l)(3)(ii)**

## **Required By the S8 Regulations**

**The PHA must give the family prompt written notice that the family may request a hearing. The notice must:**

- (i) Contain a "brief statement of reasons for the decision,"**
- (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and**
- (iii) State the deadline for the family to request an informal hearing.**

***How "brief" should you be??***

**24 CFR §982.555(c)**

**BEST PRACTICE**

## ***SOME BEST PRACTICES!***



### **General Overview of Content**

#### ***HDLI's 8 Areas of Notice Content***

1. **When?**
  - Date and time
2. **Where?**
  - Address
  - "On or off" PHA property?
3. **What happened?**
  - Specific details
  - No conclusory statements
4. **Who was involved?**
  - How is the HOH involved?
  - How are other family members involved?
  - Guest?
5. **Quote Specific authority for violation – regulation, lease §, PHA policy, other**

24 CFR 966.4(l)(3)(ii)(very general)

## General Overview of Content

### ***HDLI's 8 Areas of Notice Content – Cont'd***

**NOTE:** *If terminating assistance for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the client with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record. Attach the record to the notice...*

6. Inform the resident of the right to examine housing agency documents directly relevant to the termination

24 CFR 966.4(l)(3)(ii)

**BEST PRACTICE**

Consistently  
using a  
template will  
ensure you  
cover all 7  
areas

## General Overview of Content

### ***8 Areas of Notice Content – Cont'd***

7. State whether there are administrative review (grievance) rights, the deadline to file a grievance, and how to access grievance procedures
8. State that you have no information that the violation is as a result of their status as a victim entitled to protections under VAWA, and attach a copy of the VAWA Notice and Certification Form (mandated by VAWA)

24 CFR 966.4(l)(3)(ii)

**BEST PRACTICE**

Consistently  
using a  
template will  
ensure you  
cover all 8  
areas

**BEST PRACTICE**

*Do you have a notice template for  
each different type of termination?*

*Consistency is key...*



**QUERY:**

***What Notifications Are Required  
When the PHA Does Not Have to  
Provide A Grievance Hearing?***



## **Public Housing – No Grievance Required**

PHAs are not required to afford a PH tenant the opportunity for a hearing when the underlying conduct is based on 1) either drug related criminal activity or violent criminal activity; AND 2) in HUD's view, your local eviction law and court procedures contain the basic elements of due process as defined in HUD regulations.

Your ACOP must affirmatively exclude these types of violations from your grievance procedure.

There are no corresponding Section 8 regulations.

24 CFR 966.51(a)(2)

## **Terminations Involving Criminal Activity**

HUD let's your state know that your PH evictions procedures afford ample due process by providing a written "Due Process Determination."

But, HUD has been withdrawing Due Process Determinations when state/local eviction law no longer provides ample due process, in HUD's view.

**BEST PRACTICE**

Periodically you should reconfirm that your jurisdiction still has HUD's "Due Process Determination."

## **Terminations Involving Criminal Activity**

**As of 4/17/19 Virginia Still Has HUD's Due Process Determination For Evictions Pursuant to:**

**"An unlawful detainer action in circuit court or general district court pursuant to Va. Code Sections 8.01-126."**

Due Process Determinations are publicized in the Federal Register. See <https://www.govinfo.gov/content/pkg/FR-1996-03-26/html/96-7060.htm>

## **General Overview of Content**

**When the subject is excluded from your grievance procedures, the termination notice also must:**

**(A) State that the tenant is not entitled to a grievance hearing on the termination.**

**(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.**

**(C) State whether the eviction is for a criminal activity as described in §966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in §966.51(a)(2)(i)(B).**

**24 CFR 966.4(l)(3)(v)(A) – (C)**

## Citing Regulations

Par  
Rec



- DO parrot (or track verbatim) in your notices the specific language of the HUD regulations that were violated

## Citing Regulations

**NO Parroting of Bases  
for Termination**

**BUT...It is NOT sufficient to merely parrot the language of the regulation that provides the specific conduct that serves as basis for the denial or termination without also stating the *specific conduct* that serves as basis for the termination**

## **Examples of Insufficient Content in Notices a/k/a WHAT NOT TO DO!**



### **Insufficient Content in Notices**

**What is *not* “specific enough” information?**

- **One-sentence summary notices**
- **Did not quote regulations (e.g., concerning the need to receive approval before adding other family member as an occupant of the unit)**
- **Did not identify the persons involved (e.g., the “unauthorized individual”)**



## **Insufficient Content in Notices**

- Did not specify whether the individual allegedly resided in the unit, or was just present there
- Did not indicate when the alleged violation took place
- Did not indicate which family member committed proscribed acts
- Did not indicate the nature of the alleged crime

## **Insufficient Content in Notices**

- Did not indicate when (date) the relevant acts were committed
- Used nonspecific language - "repeated incidents of intoxication and irresponsible use of the kitchen facilities in your Unit [which] have imposed a threat [to] the peaceful enjoyment and safety of your neighbors."

## **Examples of Good Content in Notices a/k/a DO THIS!**



### **Good Content in Notices**

#### ***1. Specifying "The Violation"***

**Citing to and parroting the language of the statute(s), regulation(s), lease provision(s), and/or house rule(s) alleged to have been violated.**

**It is not enough to use generic catch-all phrases like "for violations of the lease," or "for drug-related criminal activity."**

## **Good Content in Notices**

### ***2. Specifying "The Who"***

- Identifying by full name, or at least description, the individual(s) alleged to have committed the actions which constitute the violation of the regulations, lease or house rules, etc.
- Identify his/her relation to the head of household and/or other household members
- Identifying whether the person resided in the unit, was an invited guest of the unit, or had some other purpose for being in the unit.

## **Good Content in Notices**

### ***3. Specifying "The What"***

Stating the specific actions undertaken by family members or others that constitute the violation; or the inactions of the family that constitute the violation.

Don't use conclusory statements.

## **Good Content in Notices**

### **4. Specifying “The When”**

**Stating the month, day, year, and time of day (if known) of the improper actions or inactions that constitutes the violation.;**

## **Good Content in Notices**

### **5. Specifying “The Where”**

**Stating the place(s) that the specific actions undertaken by family members or others that constitute the violation took place, taking care to note its location in comparison to the location of the tenant’s *premises*.**

## Good Content in Notices



**Don't forget to add information on administrative review (grievance) rights. Either they have the right or they don't.**

## Sample Grievance Rights Provision OPTION #1: Grievance Right

*"In accordance with [PHA's] Grievance Policy, you have the right to file a grievance complaint and request that [PHA] provide you with an administrative review before an impartial hearing officer. You must follow [PHA's] grievance procedures, including submitting your complaint to the [Executive Director] addressed to [ADDRESS]. [PHA] has a form for you to use for this purpose which is available at [LOCATION]. Feel free to contact the undersigned if you would like for me to provide you with a copy.*

**IMPORTANT:** *You must submit your request for administrative review within ten (10) business days of your receipt of this letter. If this letter was hand-delivered to, or posted at your residence, then you have ten (10) business days from the date of this letter. If this letter was mailed to you, then you are presumed to have received it within three (3) business days – so add 13 business days to the date of this letter to determine the deadline to file your request for administrative review. If you fail to comply with this deadline your grievance may not be heard."*

## Sample Grievance Rights Provision OPTION #2: No Grievance Right

*"Your violations of your lease, law, regulations, and/or [PHA] policy described above involve criminal and/or drug-related activity and therefore it is not curable. Specifically, the criminal activity is [as described in §966.51(a)(2)(i)(A)] -or- [drug-related criminal activity as described in §966.51(a)(2)(i)(B)]. A copy of one or more criminal records upon which [PHA] relied in making this determination is attached, and you have the right to dispute their accuracy or relevance if you so choose by contacting the undersigned.*

*The U.S. Department of Housing and Urban Development ("HUD") has determined that the unlawful detainer proceeding offered by our local [IDENTIFY SPECIFIC COURT] provides you with the opportunity for a hearing in court that contains the basic elements of due process as defined by HUD. Accordingly, you are not entitled to a grievance hearing on this termination. You have the right to examine PHA documents directly relevant to your lease termination and reply to this termination notice as you may wish by contacting the undersigned."*

## Good Content in Notices



**VAWA requires that you include copies of the HUD-mandated Notice of Occupancy Rights and Victim Certification Form with all termination and eviction notices.**

### **Sample VAWA Provision**

*"[PHA] has no information that the violation(s) described above are as a result of your status as a victim entitled to protections under the federal Violence Against Women Act ("VAWA") or applicable state or local law. Attached please find copies of a Notice of Occupancy Rights and a Victim Certification Form, which VAWA requires that we provide to you."*

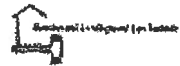
### **Additional Acts Post-Notice**

**The termination action MUST ONLY be based upon the actions/omissions specified in the termination notice.**

**If there are either 1) bases left out of original notice, or 2) additional actions/omissions that occur post-notice, if you intend to rely on them you MUST start over and send an updated notice and give requisite notice periods again - - BEFORE the termination takes effect.**

**Otherwise, the termination can be invalidated.**

**3.**  
**Timely & Proper  
Delivery  
of Notices**



**When to Deliver the Notice  
Depends Upon the Type  
of Violation...**

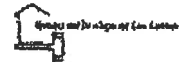




**BEST PRACTICE**

**QUERY:**

*Does staff have a checklist to ensure that each notice is delivered in the correct timeframe?*



	Type of Violation	Notice Before Termination
1	Failure to Pay Rent	14 days
2	<p>If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened</p> <p>If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or</p> <p>If any member of the household has been convicted of a felony</p>	<p>A "reasonable period of time" considering the seriousness of the situation (not to exceed 30 days)</p> <p>(Do you have a policy so that every staff person knows what is "reasonable?" 1-3-5-7... days?)</p>
3	Any other circumstance	30 days, unless a state or local law allows a shorter notice period
	24 CFR 966.4(l)(3)	

## Timely Delivery of Notices

### Effective Date of Termination:

24 CFR 966.4(l)(3)(iv)

- The lease or tenancy cannot be terminated (even if any notice to vacate under State or local law has expired) *until the time for the resident to request a grievance hearing has expired, and (if a hearing was timely requested by the resident) the grievance process has been completed.*

## Timely Delivery of Notices

### Combination with Notice to Vacate:

24 CFR 966.4(l)(3)(iii)

A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination

## Proper Methods of Delivery of Termination Notice



## Proper Delivery of Notices

**HUD says the notice "should" be served by:**

**1. Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; and**

**2. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.**

**The date on which the notice is deemed received by the tenant is the later of:**

**a. The date the first class letter is actually mailed (not the date on the letter); or**

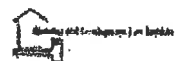
**b. The date the notice is properly personally delivered.**

**HUD Occupancy Handbook 4350.3, Ch. 8-5**

***Query:  
What Delivery Methods Do You  
Use?***



**Training Resources**



## Training Resources

- HUD PH Regulations: 24 CFR 966.4
- HUD Section 8 Regulations: 24 CFR 982.555
- HUD Occupancy Handbook, Chapter 8 "Terminations"
- *Blatch v. NYCHA* (2008), <https://www.clearinghouse.net/chDocs/public/DR-NY-0010-0002.pdf>
- VAWA Final Rule, <https://portal.hud.gov/hudportal/documents/hudoc?id=5720-F-03VAWAFinRule.pdf>.

## CONTACT

**Lisa L. Walker**

**CEO & General Counsel**

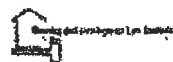
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Admissions and Continued Occupancy Policy  
**SECTION 25. TERMINATION AND EVICTION POLICY**



As a landlord, the CRHA has certain rights and responsibilities concerning termination of dwelling leases and eviction of residents who violate lease terms or are determined to be undesirable for other reasons. Those rights and responsibilities are outlined below:

- A. CRHA may terminate or refuse to renew a lease for serious or repeated violations of material terms of the lease by residents including, but not limited to:

**Criminal Activity:** The regulation at 24 CFR (Code of Federal Regulations) 966.4(e)(12), requires under Section 6(1) that every lease signed by a resident of a public housing unit must contain a provision which authorizes CRHA to consider certain "criminal activity engaged in by the resident, members of their household, another person under the control of the resident, or their guests", including drug related, *on or off* CRHA's public housing premises to be "cause for termination of tenancy". This lease provision authorizes termination of the lease and eviction of all members of the household. Thus, any criminal activity that threatens the health, safety or right to peaceful enjoyment of CRHA's public housing premises by other residents may be cause for such termination. (See CFR 966.4(e)(2) Grounds for Termination). It is the policy of CRHA to terminate tenancy of any household where a member or guest engages in such criminal, drug-related or alcohol related activity.

CRHA retains the discretion to determine on a case-by-case basis whether or not the entire household or only the offending member(s) should be evicted for such criminal activity.

CRHA has a One Strike or "zero tolerance" policy with respect to violations of lease terms regarding criminal activity.

The following include are some examples of said activities, but should not be considered as a full list of such examples:

1. Displaying a deadly weapon in connection with a verbal or nonverbal threat of bodily harm;
2. Inflicting any injury upon another person in a reckless, intentional manner.
3. Damaging any property through the intentional, reckless, careless or negligent use of a deadly weapon.

- B. Consideration of Favorable Factors

In the event of the receipt of unfavorable information with respect to a tenant and/or lease violations that could cause termination of tenancy, CRHA will give consideration to the

time, nature, and extent of the resident's conduct. CRHA will also consider factors that might indicate a reasonable probability of favorable future conduct, such as:

1. Evidence of successful enrollment and completion of an appropriate rehabilitation program for drug or alcohol-related problems (requiring certification from a health professional, or State certified program). The tenant may be required to provide evidence of otherwise being rehabilitated successfully (i.e., on-going participation in AA, ALAN ON, or other drug/alcohol support group);
  2. The seriousness of the offending action; i.e. acts regarding drug distribution will be considered highly unfavorable, acts resulting in damage/injury to persons or property will be considered highly unfavorable.
  3. The effect on the community for the failure of CRHA to take such action;
  4. The extent of participation by the leaseholder in the offending action;
  5. The effect of the action on household members not involved in the offending action;
  6. The demand for assisted housing by families who will adhere to lease responsibilities
  7. The extent to which the tenant has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
  8. The effect of CRHA's action on the integrity of the program;
  9. The willingness of the tenant to exclude the offending household member in order to remain in the housing program, where the identified member has participated in or been culpable for action or failure to act that warrants eviction;
  10. Evidence of the tenant family's participation in or willingness to participate in social services or other appropriate counseling programs, and the availability of such programs.
- C. CRHA may terminate or refuse to renew a lease to any household member who is a perpetrator of domestic violence or stalker (24 CFR part 5 Subpart L).

CRHA retains the discretion to determine on a case-by-case basis whether or not the entire household or only the offending member(s) should be evicted for such criminal activity.

An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control

shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant/participant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence. This does not limit the authority of CRHA to:

- (1) Terminate public housing assistance to individuals who engage in criminal acts of physical violence against family members or others;
- (2) Terminate public housing assistance to a tenant/participant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing Authority does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate;
- (3) Terminate public housing assistance to a tenant if the public housing Authority can demonstrate an actual and imminent threat to other tenants or those employed at, or providing service to, the property or CRHA.

Upon relocation of the household member who is the victim of domestic abuse or stalking, CRHA shall terminate the assistance of the remaining family if the perpetrator of the domestic abuse or stalking remains in the household.

- D. A resident may terminate their lease at any time but must provide CRHA thirty (30) days' notice in writing and should include a forwarding address for CRHA to return an accounting of the resident's security deposit after the resident vacates the premises.
- E. A Notice of Termination by CRHA or a resident may be given on any day of the month.
- F. CRHA must provide residents a Notice of Termination as follows:
  1. fourteen (14) days in advance, in cases of failure to pay rent;
  2. three (3) days in advance, in cases of creation or maintenance of a threat to the health and safety of other residents, or CRHA employees, or a reasonable time in excess of three (3) days considering the seriousness of the situation;
  3. thirty (30) days in advance in all other cases.
  4. The notice shall state the specific reasons for termination and if applicable how to specifically remedy the violation and inform the residents they have a right to reply, examine relevant CRHA documents, copy relevant documents at their expense, and request a grievance hearing. The Notice of Termination shall:
    - a. state that the resident is entitled to a grievance hearing on the termination; except as noted in Section F-5 of this Policy.



- b. specify the judicial eviction procedure to be used by CRHA for eviction of the resident, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing that contains the basic elements of due process as defined in HUD regulations;
  - c. state whether the eviction is for a criminal activity as described in CFR 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in CFR 966.51(a)(2)(i)(B), or a pattern of alcohol abuse which threatens the health, safety or right to peaceful enjoyment of the premises by other residents or CRHA employees;
5. HUD has issued a due process determination that the law of the State of Virginia requires that the resident be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in the Definition section of these policies) before eviction from a dwelling unit. Therefore, CRHA has elected to determine that CRHA's grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
- a. any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of CRHA; or
  - b. any drug-related criminal activity on or off such premises. Any criminal activity is cause for termination of tenancy even in the absence of conviction or arrest;
  - c. any repeated pattern of alcohol abuse which threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or CRHA employees.

**G. Termination Due to Nonpayment of Rent.**

- 1. CRHA will not file a Summons for Unlawful Detainer due to the nonpayment of rent prior to the 25<sup>th</sup> of the month in which the relevant nonpayment occurred. Prior to the 25<sup>th</sup> of the month CRHA will make every effort to communicate with resident regarding past due balances and the consequences which will result from the filing of the Summons for Unlawful Detainer. At that meeting CRHA will offer the Resident a list of charitable organizations that may be able to assist resident to pay the past due balance.
- 2. If a resident paying minimum rent is unable to pay a delinquent balance and the resident is responsive to CRHA in regard to addressing the past due rent balance and presents circumstances beyond the family's control, then CRHA may choose to offer a hardship exemption (detailed in Chapter 9 of CRHA's Admissions and Occupancy Policy and 24 CFR 5.630). Some examples of circumstances beyond the resident's control are resident illness, family death, garnishment of income. When granting a

hardship exemption CRHA will suspend the minimum rent from the beginning the month following the family's request for a hardship, and continuing until CRHA determines whether there is a qualifying financial hardship and whether it is temporary or long term. CRHA will not evict the resident for non-payment of minimum rent during the 90 day period beginning the month following the family's request for a hardship exemption. If CRHA determines that the hardship is temporary, CRHA will reinstate the minimum rent from the beginning of the suspension of the minimum rent and will offer the resident a reasonable written repayment agreement, on terms and conditions established by CRHA, for the amount of back minimum rent owed by the family. Resident will be given the opportunity to review the offered repayment agreement with legal counsel or other advocate.

3. CRHA will not file a Summons for Unlawful Detainer if a resident's outstanding balance of rent is less than or equal to fifty dollars (\$50.00).
4. CRHA and HUD consider failure to report income an act of fraud and CRHA expects residents to report any changes in income or family composition within twenty (20) days from when the change occurs. CRHA reserves the right to evict residents for failure to report income and will charge retroactive rent in addition to any proceedings required to obtain judgment and possession of the premises. CRHA may choose to offer responsive residents a repayment agreement for retroactive rent charges if resident's rental history with CRHA indicates compliance with the non-monetary terms of the lease agreement. Such efforts to inform the resident will be documented to the resident file.
5. Prior to filing a Summons for Unlawful Detainer CRHA will review the resident's income and rent to ensure rent was properly calculated. It is resident's responsibility to provide timely documentation to CRHA of any changes in income or family composition. Failure for providing timely information to CRHA is considered fraud and may result in lease termination.

H. CRHA's eviction notices to residents must be in writing, hand delivered or sent by certified mail, with a return receipt requested.

1. Notices shall be deemed delivered:

- a. upon personal service thereof to the resident or any adult member (18 years of age or older) of the resident's household;
- b. upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail; or

2. If a resident is visually impaired, any notice delivered to such resident shall be in an accessible format.

- I. After the initiation of a legal proceedings with a resident in court, CHRA will not discourage the resident from appearing in court in connection with those proceedings."
- J. Prior to the execution of the Writ of Eviction, The Executive Director will notify the resident of CRHA's intent to execute a Writ of Eviction and offer the opportunity for the resident to have a face to face meeting with the Executive Director.
- K. CRHA will accept full payments of rent owed without reservation provided that the resident is otherwise in compliance with the lease agreement. If a resident tenders the full amount of rent due, CRHA will decline to pursue and/or execute a Writ of Eviction. A resident may only tender rent owed after the award of possession once within a twelve-month period.
- L. If the resident meets with the Executive Director when requested, CRHA may offer a written repayment agreement for a term not to exceed one year from the date of judgment at terms and amounts mutually agreed upon to cover the entire past due balance including court costs. Determination for approval of a repayment agreement will be made considering resident's past compliance with the non-monetary terms of the lease agreement. At that meeting CRHA will offer a list of charitable organizations that may serve to help the resident in paying the amounts detailed in the repayment agreement. . Resident will be given the opportunity to review the offered repayment agreement with legal counsel or other advocate. If a repayment agreement is issued and the resident fails to meet the payment schedule, CRHA will file the Writ of Eviction and proceed to evict the resident.
- M. No resident and/or household member may reapply for assistance through CRHA for at least a five (5)-year period following the date of eviction for drug/alcohol- related activities, criminal acts of other violent nature, or for other good cause. The eligibility for re-housing will be determined based on the specific status of the applicant family at the time they reapply.